IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35947

STATE OF IDAHO,	)	**2010 Unpublished Opinion No. 410**
	)	
Plaintiff-Respondent,	)	**Filed: March 30, 2010**
	)	
v.	)	**Stephen W. Kenyon, Clerk**
	)	
SCOTT ALBERT BAUMANN,	)	**THIS IS AN UNPUBLISHED**
	)	**OPINION AND SHALL NOT**
Defendant-Appellant.	)	**BE CITED AS AUTHORITY**
	)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Cheri C. Copsey, District Judge.

Order denying motion to suppress evidence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Eric D. Fredericksen, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Rebekah A. Cudé, Deputy Attorney General, Boise, for respondent.

GUTIERREZ, Judge

Scott Albert Baumann appeals from the judgment of conviction upon his conditional guilty plea to felony driving under the influence (DUI). Specifically, he challenges the district court's denial of his motion to suppress. We affirm.

I.
FACTS AND PROCEDURE

Approximately fifteen minutes prior to midnight on January 31, 2008, while en route to another call on roads that were "very snowy and icy," a Boise City police officer stopped at a stop sign at an intersection in downtown Boise. The officer saw Baumann, in a white vehicle, cross in front of him and accelerate rapidly in a manner the officer concluded was in excess of what was prudent given the road conditions. The officer turned to follow Baumann, eventually catching up to him several miles away. After initiating a traffic stop, the officer made contact with Baumann which prompted the officer to begin a DUI investigation. Baumann was

subsequently arrested and a blood test revealed his blood alcohol level to be .18, in excess of the legal limit.

Based on his previous convictions for two DUIs within the last ten years, Baumann was charged with felony DUI, Idaho Code §§ 18-8004, -8005(5). He filed a motion to suppress the evidence gleaned from his arrest, contending that the officer did not have reasonable, articulable suspicion to believe that he had committed a traffic offense prior to stopping his vehicle. After a hearing, the district court denied the motion. Baumann entered a conditional guilty plea to the charge, reserving his right to appeal the denial of his motion to suppress. The district court withheld judgment and placed Baumann on probation for ten years. Baumann now appeals the denial of his motion to suppress.

II.
ANALYSIS

Baumann contends that the district court erred in denying his motion to suppress because the state failed to meet its burden to prove that he was operating his vehicle contrary to traffic laws on the night of his arrest such that the stop was lawful.

The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, we accept the trial court's findings of fact which are supported by substantial evidence, but we freely review the application of constitutional principles to the facts as found. *State v. Atkinson*, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct. App. 1996). At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court. *State v. Valdez-Molina*, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995); *State v. Schevers*, 132 Idaho 786, 789, 979 P.2d 659, 662 (Ct. App. 1999).

A traffic stop by an officer constitutes a seizure of the vehicle's occupants and implicates the Fourth Amendment's prohibition against unreasonable searches and seizures. *Delaware v. Prouse*, 440 U.S. 648, 653 (1979); *Atkinson*, 128 Idaho at 561, 916 P.2d at 1286. Under the Fourth Amendment, an officer may stop a vehicle to investigate possible criminal behavior if there is a reasonable and articulable suspicion that the vehicle is being driven contrary to traffic laws. *United States v. Cortez*, 449 U.S. 411, 417 (1981); *State v. Rawlings*, 121 Idaho 930, 932, 829 P.2d 520, 522 (1992); *State v. Flowers*, 131 Idaho 205, 208, 953 P.2d 645, 648 (Ct. App. 1998). The reasonableness of the suspicion must be evaluated upon the totality of the

circumstances at the time of the stop. *State v. Ferreira*, 133 Idaho 474, 483, 988 P.2d 700, 709 (Ct. App. 1999). The reasonable suspicion standard requires less than probable cause but more than mere speculation or instinct on the part of the officer. *Id.* An officer may draw reasonable inferences from the facts in his or her possession, and those inferences may be drawn from the officer's experience and law enforcement training. *State v. Montague*, 114 Idaho 319, 321, 756 P.2d 1083, 1085 (Ct. App. 1988). Suspicion will not be found to be justified if the conduct observed by the officer fell within the broad range of what can be described as normal driving behavior. *Atkinson*, 128 Idaho at 561, 916 P.2d at 1286.

The statute which the officer testified he suspected Baumann of violating, Idaho Code § 49-654(1), provides that:

> No person shall drive a vehicle at a greater speed than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hillcrest, when traveling upon any narrow or winding highway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions.

In relevant part, the officer testified as follows regarding his observations giving rise to his decision to stop Baumann:

> I saw a white Sonata in front of me. It was traveling, already moving and then it accelerated rapidly causing the tires to spin and it appeared to be attempting to get--to catch up to the intersection because the light must have been changing or it appeared to be changing from green to yellow perhaps.
>
> The vehicle accelerated rapidly. At that time the roadway was covered with ice and snow. And the vehicle continued to appear to be traveling in excess of what was prudent for the road conditions at that time.
>
> . . . .
>
> [The vehicle] continued to go quickly, too fast from what I could see for conditions and even potentially above the speed limit of 30 miles an hour . . . .
>
> I had to be prudent in my approach, but I was struggling to catch up with the vehicle even with the use of emergency lighting to get through specific intersections initially at Front and then at Myrtle and then continuing on.
>
> I was able to finally see the vehicle as I was just . . . to the south of the Boise River. I saw the vehicle continuing through University. Again, it would appear to be at a high rate of speed. I had to accelerate really uncomfortably fast in order to be able to catch up to the vehicle.
>
> . . . .

> It's a 30 mile-an-hour zone as I recall through 9th Street. I believe he was doing at least 30 to 35 miles an hour or more, but at that time that was not prudent for the road conditions evident by people sliding.
>
> In fact . . . two different times I saw him driving [and] his tires weren't able to appropriately accelerate and decelerate without them spinning and losing control.

Finding there was requisite suspicion for the officer to effect the stop, the district court stated the following at the conclusion of the hearing on the motion to suppress:

> The evidence before the Court is very clear. I find the officer's testimony credible. . . . [I]n this case I think the officer's testimony is very credible for a couple reasons.
>
> Number one, one of the things that I noted here is that when given the opportunity to suggest that perhaps Mr. Baumann had failed to signal, which is obviously a very . . . typical basis for an appropriate stop, he said he really didn't recall. He also said that . . . normally he would assume that he had because if he hadn't it is something that he would have noted.
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> He also didn't suggest that any of the equipment was operating improperly. What he did articulate is what he saw to be a violation of a traffic law. That's [Idaho Code §] 49-654, subsection (1), which is going too fast for conditions. He described conditions that would have required an individual to--in order to drive their car safely to be driving at a lower speed limit than the posted speed limit.
>
> He clearly described what he heard and saw. He indicated that the road conditions, they were snowy with ice covered . . . as well as bare spots. He described numerous times where the defendant's tires spun.
>
> . . . [W]hat I felt was also telling is that in the discussion on the tape that I listened to he didn't tell dispatch that he was investigating someone who was under the influence. In fact, what he said is he was going to stop him and that . . . depending on what he found, he may be clear to go to the Broadway investigation as a STEP officer because that's where he was on his way to.
>
> Given all of that, and the standard is very clear that so long as an officer has a reasonably [sic], articulable suspicion that the defendant has violated a traffic law, that that is a sufficient basis to justify a stop. He clearly articulated a reasonable suspicion that the defendant had violated the statute and therefore had a basis for the stop . . . .

On appeal, Baumann contends that pursuant to *State v. Trimming*, 89 Idaho 440, 406 P.2d 118 (1965), the district court was required to consider more than simply the "purported" road conditions in concluding that Baumann "should have been driving under the posted speed limit." In *Trimming*, the issue before the court was whether the state sustained its burden of proof sufficient to convict Trimming of driving at a speed greater than is reasonable or prudent under the conditions in violation of I.C. § 49-701 (a predecessor of the current I.C. § 49-654(1)). Specifically, the court examined whether driving a motor vehicle on a highway in excess of the

posted speed, in and of itself, was a crime--particularly when there was no showing of conditions that rendered the speed unreasonable and imprudent. At the time, I.C. § 49-701 provided that driving above the speed limit was only "prima facie evidence that 'the speed is not reasonable or prudent,'" thus allowing a driver to submit evidence that there existed no conditions or hazards at the time that rendered such speed unreasonable. *Trimming*, 89 Idaho at 445, 406 P.2d at 121. On this basis, the court concluded that in order to convict a defendant of violating I.C. § 49-701, there must be a further showing on the part of the state beyond a mere showing that the defendant had exceeded the speed limit. *Id*. at 450, 406 P.2d at 124-25.

Baumann's reliance on *Trimming* is misplaced for several reasons. First, as the state correctly points out, contrary to Baumann's phrasing of the issue on appeal, the state is not required to *prove* that Baumann was operating his vehicle contrary to traffic laws (specifically I.C. § 49-654(1)), rather it must establish that, considering the totality of the circumstances, the officer had reasonable, articulable suspicion that Baumann was driving in contravention of traffic laws. As such, *Trimming* is inapplicable to the instant case in terms of the proof that must be presented--it concerned the evidence required to sustain a *conviction* (beyond a reasonable doubt) as opposed to the significantly less stringent standard of reasonable, articulable suspicion to validate a stop.

In addition, the statute as it now exists has eliminated the language stating that driving in excess of the speed limit is merely "prima facie" evidence that a speed is not reasonable or prudent. Thus, so far as the *Trimming* court relied on the "prima facie" language of the statute to conclude that evidence of speeding alone does not render a defendant's driving per se unreasonable or imprudent, but rather establishes a rebuttable presumption of unreasonableness--and therefore required more evidence than the mere fact that the defendant was speeding where the defendant had alleged that there were no conditions or hazards rendering the speed at which he was traveling unreasonable or imprudent--it is inapplicable to the current statute. Finally, even if *Trimming* still applied to the statute in its current form--its holding was that, to sustain a conviction, the state cannot rely on speed alone but must prove that the speed was excessive under the existing conditions. Here, the state complied with that holding--it did not rely on speed alone, but introduced testimony as to the conditions which rendered Baumann's speed unreasonable or imprudent. Baumann's attempt to interpret *Trimming* as requiring that a court take into account more than just the purported condition of the road in determining whether a

defendant was driving too fast for the conditions--and that this somehow affects the suspicion that an officer must possess to effect a stop--fails. Such an interpretation is not supported by the clear language of the case.

A review of the record convinces us that the officer possessed reasonable, articulable suspicion that Baumann was operating his vehicle in contravention of I.C. 49-654(1). The officer, whose testimony the district court found to be credible, stated that the road surface consisted of ice and snow with some bare spots and that he witnessed Baumann driving in a manner causing his tires to spin and "lose control." The officer also testified that Baumann was driving at a speed that made it difficult for the officer to catch up with him. This constituted reasonable, articulable suspicion that Baumann was driving at an unreasonable speed in light of the roadway conditions such that the stop was constitutionally valid. Accordingly, we conclude that the district court did not err in denying Baumann's motion to suppress and therefore, we affirm Baumann's judgment of conviction for felony DUI.

Judge GRATTON and Judge MELANSON **CONCUR.**